

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

75-7099

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

GEORGE BEDROSIAN and THOMAS HAGAN,
ROBERT HANDELMAN and BERNARD SHIPMAN,
WALTER WILLIAMS and OTIS McGAUGHY
(OMAR SEKOU TOURE), and all others
similarly situated,

Plaintiff-Appellants,

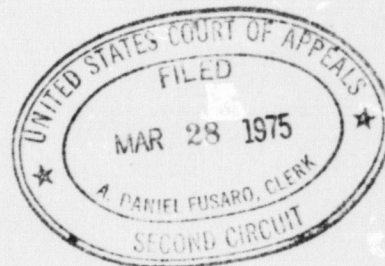
-vs-

No. 75-7099

JOSEPH D. MINTZ, Administrator, Erie
County Bar Association Aid to Indigent
Prisoners Society, Inc.; the ERIE COUNTY
BAR ASSOCIATION AID TO INDIGENT PRISONERS
SOCIETY, INC.; and CARMAN F. BALL, Justice
of the Supreme Court and Presiding Judge
of the Additional Special and Trial Term
of the Wyoming County Court, in his rep=
resentative and individual capacity,

Defendant-Appellees.

APPENDIX TO BRIEF



HERMAN SCHWARTZ, ESQ.
EDWARD I. KOREN, ESQ.
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(716) 636-2091

Attorneys for Plaintiff-Appellants

PAGINATION AS IN ORIGINAL COPY

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

GEORGE BEDROSIAN, et al.,

Plaintiff-Appellants,

No. 75-7099

-vs-

JOSEPH D. MINTZ, etc., et al.,

Defendant Appellees.

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

GEORGE BEDROSIAN and THOMAS HAGAN,
ROBERT HANDELMAN and BERNARD SHIPMAN,
WALTER WILLIAMS and OTIS McGAUGHY
(OMAR SEKOU TOURE), and all others
similarly situated,

Plaintiffs,

-vs-

JOSEPH MINTZ, Administrator, Erie
County Bar Association Aid to Indigent
Prisoners Society, Inc.; the ERIE
COUNTY BAR ASSOCIATION AID TO INDIGENT
PRISONERS SOCIETY, INC.; and CARMAN F.
BALL, Justice of the Supreme Court and
Presiding Judge of the Additional
Special Trial Term of the Wyoming
County Court, in his representative
and individual capacity,

T-4342

Defendants.

Heard before Hon. John T. Curtin in the United States District Court for
the Western District of New York, #74-325

INDEX OF RECORD ON APPEAL

1. Complaint, dated June 4, 1974
2. Marshals Service on Summons and Complaint served on Joseph Mintz,
Carman F. Ball, Erie County Bar Association
3. Plaintiffs' Interrogatory to Carman F. Ball, dated June 27, 1974
4. Defendants' Notice of Motion for an Order Dismissing the Complaint,
dated October 17, 1974
 - Attached: Affidavit of Douglas S. Cream in Support of Motion,
dated October 17, 1974
 - Ex. 1: Defendant Carman F. Ball, Answer to Plaintiffs'
Interrogatory, dated August 26, 1974
 - Ex. 2: Partial transcript of proceedings before Hon.
Carman F. Ball, dated March 1, 1974
5. Plaintiffs' Motion for Summary Judgment, dated October 22, 1974
 - Attached: Affidavit in Support of Motion by Herman Schwartz,
dated October 22, 1974
 - Ex. A: Affidavit of Walter Williams, dated July 1973
 - Notice of Appearance and Application for Fees and Expenses

Ernest Goodman, dated March 26, 1974
Affidavit of Ernest Goodman, dated March 26, 1974
List of Defendants and Attorneys in Attica cases,
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6. Motion to Dismiss on behalf of Defendants Joseph Mintz, Administrator, and Erie County Bar Association Aid to Indigent Prisoners Society, Inc., dated November 18, 1974
7. Affidavit of Defendant Joseph D. Mintz, dated Nov. 19, 1974
8. Memorandum of Law on behalf of Defendants Joseph Mintz, Administrator, Erie County Bar Association Aid to Indigent Prisoners Society, Inc.; and Carman F. Ball in Support of Motion to Dismiss Complaint, dated Nov. 19, 1974
9. Affidavit by Douglas S. Cream in Opposition to Plaintiffs' Motion for Summary Judgment, dated November 22, 1974
Attached: Exhibit 1, Chap. 922, New York State Laws of 1974
10. Plaintiffs' Memorandum of Law in Support of Motion for Summary Judgment, dated November 14, 1974
11. Plaintiffs' Reply Memorandum of Law, dated December 11, 1974
12. Reply Memorandum on behalf of Defendants Joseph Mintz and Erie County Bar Association Aid to Indigent Prisoners Society, Inc., dated Dec. 13, 1974
13. Affidavit of Herman Schwartz, dated December 23, 1974
Attached: Application of Ernest Goodman for Travel Expenses, dated December 18, 1974
Order of Carman F. Ball, undated
Order of Carman F. Ball, dated April 9, 1974
14. Decision and Order Granting Defendants' Motion to Dismiss for Failure of Plaintiffs to Present a Substantial Federal Question, dated Jan. 6, 1975
15. Judgment Granting Defendants' Motion to Dismiss, dated Jan. 6, 1975
16. Plaintiffs' Notice of Appeal, dated Jan. 13, 1975

Plaintiffs' Exhibits:

1. "The Watergate 22," Juris Doctor, September 1974, pp. 38-39
2. Letter to Hon. Frederick M. Marshall from Defendant Joseph D. Mintz, Administrator, dated September 17, 1973
3. Affidavit of Defendant Joseph D. Mintz, dated November 28, 1973

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

34

GEORGE BEDROSIAN and THOMAS HAGAN,
ROBERT HANDELMAN and BERNARD SHIPMAN,
WALTER WILLIAMS and OTIS McGAUGHY
(OMAR SEKOU TOURE), and all others
similarly situated,

Plaintiff:

31V- 74-2206

-vs-

COMPLAINT

JOSEPH MINTZ, Administrator, Erie County
Bar Association Aid to Indigent Prisoners
Society, Inc.; the ERIE COUNTY BAR
ASSOCIATION AID TO INDIGENT PRISONERS
SOCIETY, INC.; and CARMAN F. BALL, Justice
of the Supreme Court and Presiding Judge
of the Additional Special Trial Term of
the Wyoming County Court, in his represen-
tative and individual capacity,

Defendants

NATURE OF CLAIM AND JURISDICTION

1. This is a class action under 42 U.S.C. §1983 challenging defendants' refusal to appoint the out-of-state attorneys of record for the Attica cases pursuant to County Law §18-b, thereby depriving them of compensation for representation and reimbursement for expenses, in violation of the Constitution and laws of the United States. Jurisdiction is based upon Title 28 U.S.C. §§ 1343(3) and 2201.

PARTIES

2. Plaintiffs include two groups: attorneys admitted to the bar in states other than New York, and indictees in criminal cases growing out of the September 9-13 uprising at Attica whom the attorney-plaintiffs represent.

(a) Plaintiff GEORGE BEDROSIAN is an attorney duly licensed to practice law in the State of Michigan and is an attorney duly admitted pro hac vice to represent plaintiff THOMAS HAGAN in the Supreme Court, State of New York, County of Erie, on charges arising out of the rebellion at Attica Correctional Facility which took place between September 9-13, 1971.

(b) Plaintiff THOMAS HAGAN is presently incarcerated at Attica Correctional Facility and is under indictment by a Special Grand Jury from the County of Wyoming on charges stemming from his alleged involvement in the September, 1971, uprising at Attica.

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(c) Plaintiff ROBERT HANDEIMAN is an attorney duly licensed to practice law in the State of Ohio and is an attorney duly admitted pro hac vice to represent plaintiff BERNARD SHIPMAN in the Supreme Court, State of New York, County of Erie, on charges arising out of the rebellion at Attica Correctional Facility which took place between September 9-13, 1971.

(d) Plaintiff BERNARD SHIPMAN is presently incarcerated at Attica Correctional Facility and is under indictment by a Special Grand Jury from the County of Wyoming on charges stemming from his alleged involvement in the September, 1971, uprising at Attica.

(e) Plaintiff WALTER WILLIAMS is an attorney duly licensed to practice law in the State of Illinois and is an attorney duly admitted pro hac vice to represent plaintiff OTIS MCGAUGHY (OMAR SEKOU TOURE) in the Supreme Court, State of New York, County of Eire, on charges arising out of the rebellion at Attica Correctional Facility which took place between September 9-13, 1971.

(f) Plaintiff OTIS MCGAUGHY (OMAR SEKOU TOURE) is presently incarcerated at Attica Correctional Facility and is under indictment by a Special Grand Jury from the County of Wyoming on charges stemming from his alleged involvement in the September, 1971, uprising at Attica.

3. (a) Defendant JOSEPH MINTZ is the Administrator of the Erie County Bar Association Aid to Indigent Prisoners Society, Inc., and as such, has the responsibility and authority for approving payments to counsel representing indigent defendants facing felony trials in Erie County, including the indigtee-plaintiffs herein.

(b) Defendant ERIE COUNTY BAR ASSOCIATION AID TO INDIGENT PRISONERS SOCIETY, INC., is a business corporation duly incorporated under the laws of New York and is chartered to disburse monies to counsel representing indigent defendants facing felony trials in Erie County, including the indigtee-plaintiffs herein.

(c) Defendant CARMAN F. BALL is Justice of the Supreme Court of the State of New York, County of Erie, and presides over the Attica Term.

4. The attorney-plaintiffs sue on behalf of themselves and all other out-of-state Attica defense attorneys denied appointment pursuant to County Law §18-b, and the indigtee-plaintiffs sue on behalf of themselves and all other Attica indigtees represented by out-of-state attorneys. Both classes are so numerous that joinder of all members of each class is impractical; there are questions of law and fact relative to the propriety of assignment

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of out-of-state attorneys common to both classes and to all members thereof; the representative parties will fairly and adequately represent the classes; prosecution of separate actions by individual members of the classes would create a risk of inconsistent or varying adjudications and would establish incompatible standards for defendant Mintz; the defendants have acted or will refuse to act on grounds generally applicable to the class, thereby making appropriate final declaratory relief with respect to the class as a whole.

FACTS

5. On July 30, 1973, defendant Ball admitted and appointed attorneys of record for the Attica cases. These attorneys fall into three categories:

(a) Those admitted pursuant to County Law §18-b who are members of the Erie County and New York State Bars, and who were drawn from the county list of attorneys available to take cases.

(b) Those admitted pursuant to County Law §18-b who are members of the New York State Bar but not of the Erie County Bar, and who were not drawn from the county list of area attorneys available to take indigent criminal cases. The majority of these attorneys are from New York City.

(c) Those admitted pursuant to the Court of Appeals Rules for Admission of Attorneys, Rule 520.8, admission pro hac vice, who are not members of the New York State or Erie County Bars, but who are members of the Bar in the state where they are licensed to practice law.

6. These attorneys are all counsel-of-choice in that their clients requested their representation.

7. The indictee-plaintiffs have all been found indigent, as indeed have all other indigents in the cases growing out of the September 9-13, 1971, uprising at Attica.

8. It has been difficult to obtain local counsel because of the uncertainty as to the amount and timing of the compensation. As a result, in the spring of 1973, a nationwide call for attorneys was necessary, and the attorney-plaintiffs responded thereto.

9. On July 30, 1973, and on many occasions subsequent thereto, defendant Ball has announced and ruled that he will not appoint or assign any attorneys who are not members of the New York State Bar, though he will admit them pro hac vice. This ruling was memorialized in a decision dated April 9, 1974, as superceded and amended in minor details on

May 6 and May 10, 1974, in connection with the application of Ernest Goodman to be appointed as counsel for Bernard Strobbe a/k/a Shango. Goodman's challenge to that ruling was dismissed by the Appellate Division, Fourth Department, on jurisdictional grounds. On no occasion has defendant Ball given any formal explanation of his ruling other than is contained in the memorandum of April 9, 1974, attached hereto.

10. In accordance with defendant Ball's aforementioned ruling, he has refused to appoint or assign plaintiffs BEDROSIAN, HANDELMAN, and WILLIAMS to plaintiffs HAGAN, SHIPMAN, and McGAUGHY (TOURE), respectively, on or about July 30, 1973, but has admitted them pro hac vice pursuant to Rule 520.8 of the Court of Appeals Rules for Admission of Attorneys and permitted out-of-state attorney -plaintiffs to represent members of the indietee -plaintiffs class. He has thereby acknowledged that the attorney -plaintiffs are fully qualified and competent to represent the indietee -plaintiffs. The only reason he has refused to appoint attorney -plaintiffs as counsel for the indietee -plaintiffs is that the former are out-of-staters, and not members of the New York Bar.

11. The result is that indietees whose attorney-of-choice is a member of the New York Bar are enabled to have counsel appointed for them, whereas those whose attorney of choice is not a member of the New York Bar cannot have counsel appointed for them.

12. Counsel who are appointed will have their time and expenses compensated; counsel who are not appointed will have to contribute their time without any compensation and will have to find ways to defray their expenses, either from their own pocket or otherwise. So far, the attorney -plaintiffs have contributed both time and expense money.

13. The State of New York has appropriated approximately \$700,000 for the support of the defense, which sum includes compensation and expenses for counsel.

CLAIMS

14. The refusal to appoint and thereby compensate and otherwise reimburse the attorney -plaintiffs solely because they are not members of the New York State Bar, even though they are concededly competent,

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constitutes a denial of the equal protection of the laws, of the attorney -plaintiffs' privileges and immunities as citizens of the United States and an infringement upon their right to travel. There is no compelling or even rational basis for such invidious discrimination and other infringements upon the attorney -plaintiffs' constitutional rights.

(a) The attorney -plaintiffs are discriminated against vis-a-vis other attorneys who are members of the New York Bar.

(b) Such discrimination is solely because they are members of out-of-state Bars, which produces an impermissible burden on the practice of their profession.

(c) Such discrimination discourages out-of-state attorneys from practicing law in the courts of New York State and constitutes an impermissible burden on travel and on interstate commerce.

(d) Such a burden on travel and on appearances in the courts of New York State infringes on the privileges and immunities of United States citizenship which includes the right to practice one's profession in other states if qualified and competent to do so.

15. (a) Because the attorney-plaintiffs will be neither compensated for their time or reimbursed for their expenses, it will be far more difficult for them than for attorneys who are so compensated and reimbursed to provide effective assistance of counsel. Such a refusal therefore violates the indictree-plaintiffs' right under the Sixth and Fourteenth Amendments to the effective assistance of counsel.

(b) Defendants' refusal to appoint the attorney-plaintiffs as counsel for the indictree-plaintiffs, while being willing to appoint counsel of choice for those indicttees who want members of the New York Bar, constitutes an invidious classification and discrimination against the indictree-plaintiffs. Since no justification whatsoever is advanced or available for the refusal to appoint qualified out-of-state counsel of choice, and there is a willingness to appoint qualified in-state counsel, the refusal is not justified by either a compelling or a rational state interest.

(c) The discrimination against out-of-state counsel will also discriminate against the indictree-plaintiffs in that all indicttees have

been allowed counsel of their choice but those indictees who happen to have chosen in-state counsel will have counsel whose time and expenses will be compensated, whereas indictees who have chosen out-of-state counsel will have attorneys without such benefits. The latter group of indictees will thus have attorneys who will have a more difficult time providing effective assistance of counsel.

16. Appointment of out-of-state counsel will not incur greater expenses than the State of New York is obligated and ready to incur for the defense of the Attica indictments.

17. All of the above actions by defendants violate 42 U.S.C. §1983.

18. Plaintiffs have no adequate remedy at law. Trial preparation is going forward right now and unless this matter is resolved in advance of trial, no post-trial remedy will suffice.

REMEDY

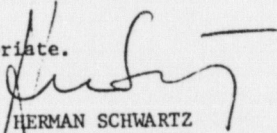
WHEREFORE, plaintiffs request:

1. A declaratory judgment that the attorney-plaintiffs are entitled to compensation to the same extent as counsel appointed for indictees who are members of the New York Bar.

2. A mandatory injunction ordering defendants to appoint the attorney-plaintiffs and members of their class as counsel for the indictee-plaintiffs and members of their class, pursuant to New York County Law §18-b.

3. The costs and disbursements of this action, including attorneys' fees.

4. Such other relief as is appropriate.


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Of Counsel

DATED: June 4, 1974
Amherst, New York

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

9a

GEORGE BEDROSIAN and THOMAS HAGAN,
ROBERT HANDELMAN and BERNARD SHIPMAN,
WALTER WILLIAMS and OTIS MCGAUGHY
(OMAR SEKOU TOURE), and all others
similarly situated

Civil Action
CIV-74-286

Plaintiffs

-vs-

JOSEPH MINTZ, Administrator, Erie County
Bar Association Aid to Indigent Prisoners
Society, Inc.; the ERIE COUNTY BAR ASSO-
CIATION AID TO INDIGENT PRISONERS SOCIETY,
INC.; and CARMAN F. BALL, Justice of the
Supreme Court and Presiding Judge of the
Additional Special Trial Term of the
Wyoming County Court, in his representa-
tive and individual capacity

MOTION TO
DISMISS

Defendants

SIRS:

The defendants Joseph Mintz, Administrator, and Erie County Bar Association Aid to Indigent Prisoners Society, Inc. respectfully move the Court for an Order dismissing the complaint herein under Rule 12(b)(6) for failure to state a claim upon which relief can be granted. This motion is made upon the complaint filed herein, the motion to dismiss dated October 17, 1974 made by the co-defendant Hon. Carman F. Ball and papers and affidavits provided to the Court upon the motion, the motion for summary judgment dated October 22, 1974 made by plaintiffs and the papers and affidavits provided to the Court upon the motion, and upon the affidavit of defendant Joseph D. Mintz, Administrator, sworn to November 19, 1974, and the memorandum of law to be provided the Court by counsel in support of this motion, and all proceedings and pleadings heretofore had herein.

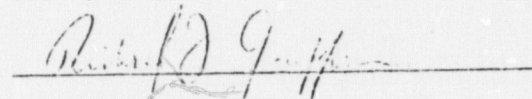
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Oral argument is requested.

Dated: November 18, 1974

Buffalo, New York

Yours, etc.



RICHARD F. GRIFFIN
MOOT, SPRAGUE, MARCY, LANDY, FERNBACH
& SMYTHE

Attorneys for Defendants Joseph Mintz,
Administrator, Erie County Bar Association
Aid to Indigent Prisoners Society, Inc.,
and Erie County Bar Association Aid to Indigent Prisoners
Society, Inc.

Office and P.O. Address
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Buffalo, New York 14202
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TO:

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Buffalo, New York 14202

11a

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

GEORGE BEDROSIAN and THOMAS HAGAN,
ROBERT HANDELMAN and BERNARD SHIPMAN,
WALTER WILLIAMS and OTIS MCGAUGHY
(OMAR SEKOU TOURE), and all others
similarly situated,

Plaintiffs

-vs-

Civil 74-286

JOSEPH MINTZ, Administrator, Erie County
Bar Association Aid to Indigent Prisoners
Society, Inc.; the ERIE COUNTY BAR
ASSOCIATION AID TO INDIGENT PRISONERS
SOCIETY, INC.; and CARMAN F. BALL, Justice
of the Supreme Court and Presiding Judge
of the Additional Special Trial Term of
the Wyoming County Court, in his
representative and individual capacity,

Defendants

APPEARANCES: HERMAN SCHWARTZ, ESQ. & EDWARD I. KOREN,
ESQ., New York Civil Liberties Union
Foundation, Amherst, New York, for
Plaintiffs.

RICHARD F. GRIFFIN, ESQ.
MOOT, SPRAGUE, MARCY, LANDY, FERNBACH &
SMYTHE, Buffalo, New York, for Defendants
Mintz & Erie County Bar Association Aid
to Indigent Prisoners Society, Inc.

LOUIS J. LEFKOWITZ, ESQ., Attorney General
of the State of New York (DOUGLAS S.
CREAM, ESQ., of Counsel), Buffalo, New
York, for Defendant Justice Ball.

This is a class action under the Civil Rights Act (42 U.S.C. §1983) for equitable relief regarding ongoing criminal proceedings in New York State Supreme Court. Plaintiffs are either defendants in criminal cases stemming from the September 1971 uprising at the Attica Correctional Facility, or out-of-state attorneys admitted pro hac vice to represent defendants in the criminal cases in the New York courts. This action may proceed as a class consisting of these two groups.

The plaintiff-attorneys allege that their constitutional rights have been violated by the refusal of the defendant, Carman F. Ball, presiding Justice in the criminal cases, to assign them pursuant to §722-b of the New York County Law. That provision permits the court to compensate assigned attorneys for time spent and expenses incurred in defending indigent criminal defendants.

The plaintiffs allege, and the defendants concede, that attorneys admitted to practice in the New York courts by the respective Judicial Departments have been assigned to various criminal cases and will be

receiving compensation for time and expense. Furthermore, assigned counsel for some of the defendants reside outside of Erie County, in New York City or Albany, and the added expense of travel and lodging will apparently be borne by the court. Supreme Court Justice Carman F. Ball has made admission for general practice in the State of New York a requirement for assignment of counsel pursuant to the provisions of New York County Law §722-b.¹

The plaintiffs contend that this discrimination in assignment, based solely upon out-of-state bar membership, violates the plaintiff-indictees' rights to effective assistance of counsel and equal protection of the laws, and the plaintiff-attorneys' privileges and immunities as citizens and equal protection of the laws.

The defendants contend, inter alia, that the appointment of counsel is within the sole discretion of the judge in the state court, and not reviewable under the Civil Rights Act (42 U.S.C. §1983). Because the court is in agreement with this position, a decision upon the issues of discrimination would be inappropriate.

The choice of assigned counsel to an indigent defendant is for the judge, not the defendant. United States ex rel. Torry v. Rockefeller, 361 F.Supp. 422 (W.D.N.Y. 1973); Davis v. Stevens, 326 F.Supp. 1182 (S.D.N.Y. 1971). If retained counsel is unable to proceed because his client becomes indigent, it is within the discretion of the trial judge to assign him, or another attorney of the judge's choice. Stream v. Beisheim, 34 App.Div.2d 329, 311 N.Y.S.2d 542 (2d Dept. 1970).

Matters within the discretion of the state trial justice, such as the choice of assigned counsel, are reviewable on appeal, not under the Civil Rights Act. Pierson v. Ray, 386 U.S. 547 (1967), cited with approval in Scheuer v. Rhodes, 416 U.S. 232, at 244-245 (1974). See also Goodman v. Ball, 356 N.Y.S.2d 146 (1974).

Therefore, the motion of the defendants to dismiss is granted for failure of the plaintiffs to present a substantial federal question.

So ordered.

JOHN T. CURTIN
United States District Judge

DATED: January 6, 1975

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FOOTNOTE

1

Apparently compensation for special expenses of the defense is being made pursuant to §722-c of the County Law. It is the lawyers' personal time and expense which is still in issue (see memorandum of Ball J., dated April 9, 1974, annexed to Schwartz affidavit of December 23, 1974).

8/26/74

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UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF NEW YORK

GEORGE BEDROSIAN, et al.

Plaintiffs

vs.

JOSEPH MINTZ, etc., et al.

Defendants

STATE OF NEW YORK :
COUNTY OF ERIE : ss.
CITY OF BUFFALO :

CARMAN F. BALL, being duly sworn, deposes and
says:

1. That he is a Supreme Court Justice of the
Eighth Judicial District of the State of New York.

2. That deponent was assigned by the Appellate
Division, Fourth Department, State of New York on November 5,
1971 to preside at an additional special term and trial term
for Wyoming County at Warsaw, New York, with respect to those
matters set forth in the executive order issued by the
Governor on October 29, 1971 growing out of the Attica
uprising.

3. That such order was amended to provide that an
additional special and trial term be held in Erie County
commencing June 1, 1973 continuing until the complete
disposition of all matters arising out of the indictments

Exhibit "1"

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transferred by order of the Appellate Division assigning deponent to preside at said term.

4. That deponent has been in charge of the Attica indictments and the assignment of counsel to the defendants.

5. That the New York State Legislature under Article 18B of the County Law set up a system for the payment of counsel fees for indigent defendants which the County of Erie has implemented by a plan developed in conjunction with the Erie County Bar Association to make available attorneys who are ready and willing to represent indigent defendants by assignment.

6. With respect to the Attica indictments, each defendant was advised of his right to counsel of his own choice and that if he did not have sufficient funds to hire counsel, the Court would assign counsel in accordance with Article 18B of the County Law.

7. That some of the defendants refused to accept assigned counsel and wanted to represent themselves.

8. That other defendants refused assigned counsel indicating they were seeking retained counsel.

9. That other defendants obtained out of state counsel and asked that they be permitted to represent them as assigned counsel, which this Court denied. Those defendants then asked that the out of state counsel be permitted to

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represent them as retained counsel, which the Court in its discretion permitted.

10. That requests were made for the appointment of named New York State attorneys as assigned counsel from outside the Erie County area. Because of the extraordinary circumstances of the Attica uprising, the Court in its discretion allowed defendants to choose counsel admitted to the Bar of New York as assigned counsel.

11. That requests for attorneys who were not licensed to practice in New York State were denied because there were and are attorneys who are licensed to practice in New York State who were and are ready and willing to accept assignments.

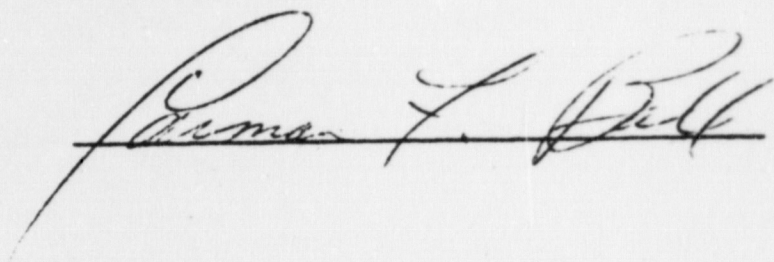
12. That the Court in its discretion did not assign out of state attorneys because the Court was unfamiliar with their backgrounds, in that their competence and understanding of New York State law and criminal procedure was not certified to by having passed the New York State Bar Examination, or by admittance to practice by an Appellate Division of the Supreme Court of New York. In addition, the Court feels the expenses involved in transportation, living expenses, accommodations for office space, etc., would be an excessive burden upon the taxpayers of New York State depleting the state funds which were intended for the legal defense of the defendants.

13. That in each instance in which the Court refused

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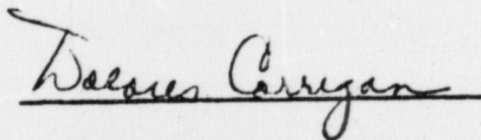
to assign out of state counsel an application was made by the defendant and the attorney to appear as retained counsel pro hoc vice which, in the Court's discretion, was permitted. The defendant knew that the attorney was not admitted to practice in New York State and that if he desired that attorney to represent him, the defendant and attorney understood that it would be without compensation being paid counsel by the State of New York.

14. That the Court informed the defendant that it was ready and willing to assign New York State lawyers to represent those defendants and the lawyers would be paid according to the New York State plan.



Sworn to before me this

26 day of August, 1974



DOLORES CORFIGAN
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 1976

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STATE OF NEW YORK

SUPREME COURT : COUNTY OF ERIE

THE PEOPLE OF THE STATE OF NEW YORK

-VS-

Indictment No.

BERNARD STROBLE,

42

Defendant.

Proceedings taken before the HON. CARMAN F. BALL,
Justice of the Supreme Court of the State of New York,
in Part 3, Erie County Hall, Buffalo, New York, on
March 1st, 1974, commencing at 2:35 p.m.

APPEARANCES: ERNEST GOODMAN, ESQ.,
appearing on behalf of the
Defendant Stroble.

Exhibit "2"

2/a

1 MR. BUSH: Your Honor, we have an appli-
2 cation regarding Bernard Stroble.
3 THE COURT: All right, bring Mr. Stroble
4 in.
5 MR. BUSH: Judge, this application concerns
6 representation of counsel for Mr.
7 Stroble on one of his indictments,
8 Indictment 42. That indictment is
9 still in Wyoming County. /We would
10 ask that this proceeding be allowed
11 to happen here, rather than the
12 need to go out to Wyoming County
13 for it.
14 THE COURT: All right, granted.
15 MR. BUSH: I would like to introduce to
16 the Court Mr. Ernest Goodman, who
17 has an application to make to this
18 Court regarding that representation.
19 THE COURT: All right.
20 MR. GOODMAN: If it please the Court, my name
21 is Ernest Goodman. I am an attorney
22 in Detroit, Michigan, 3200 Cadillac
23 Tower. Mr. Stroble comes from

1 Detroit, I have seen and talked to
2 his mother. As a result, I have
3 visited him here today for the
4 second time and he has requested that
5 I be appointed as his attorney with
6 respect to this particular indict-
7 ment. And I would be glad to advise
8 the Court at any point as to my
9 background and qualifications.

10 THE COURT:

You have tried some criminal
cases, have you?

11
12 MR. GOODMAN:

I have been an attorney since
1928 and I have tried criminal cases
in Michigan and elsewhere, court
martials, murder cases, and many
others; admitted to the State Court,
several other state courts, the
United States Supreme Court.

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19 THE COURT:

You are not a member of the
bar in New York State?

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21 MR. GOODMAN:

I am not a member of the bar
in this state.

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23 THE COURT:

All right, Mr. Stroble. You

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1 have heard what Mr. Goodman has to
2 say, and you have indicated up to
3 this point that you wanted to appear
4 pro se. Is it your desire that I
5 allow Mr. Goodman to appear as your
6 counsel?

7 DEFENDANT:

8 Yes, your Honor. As you know,
9 we have had some difficulty with
10 retaining counsel, the Attica
11 Brothers and I, personally, have had
12 several interviews with various
13 lawyers on occasion concerning
14 representation. And I have spoken
15 to Mr. Goodman - - and I have spoken
16 to him just recently today, and we
17 find Mr. Goodman to be a very
18 excellent person, and I am quite sure
19 that I would get the proper represent-
20 ation from him, and he is my choice
21 of counsel. And he has agreed to
22 represent me.

23 THE COURT:

All right. And it's going to
be limited to this one indictment.

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You are going to continue to be
pro se on the others, is that correct?

DEFENDANT: As he indicated, Indictment No.
42.

MR. GOODMAN: I should make it clear to the
Court that I only wish to be appointed
in this one case.

THE COURT: All right. Then you may appear
as retained counsel. And, of
course, as I have explained to these
other attorneys that are not admitted
to New York State, any compensation
that you may receive will have to be
from sources other than the State.

MR. GOODMAN: Well, I understand from counsel
associated with the other indictments
in this matter that the question - -
in the first place, I should say
that my client here, prospective
client here, has no money, as far as
I know and he is in no position to
retain me on any personal basis. I
understand that the question as to

whether out-of-state counsel should be paid by the State is a matter that is still under consideration and I would not like to waive that matter at this point.

THE COURT:

Well - -

MR. GOODMAN:

I would like to have - - I would, at least, like to have the record show that I have requested to be appointed as his counsel at this point.

THE COURT:

Well, I am denying that request. And Mr. Goodman, so that it is perfectly clear, there is no understanding with the Court whatsoever of any compensation being paid from New York State funds to an attorney not admitted to the bar in New York State, because we are ready, willing and able to supply New York admitted attorneys to these defendants, if they so desire. Now if they want to bring somebody in from out of

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state on a retainer basis, whether
you collect any retainer or not,
that's up to you and your client.
But you shouldn't represent the
defendant with any understanding that
this is up in the air or it may be
decided, because I can tell you right
now that unless they come in - -
and no one up to this point, has come
in - - with any authority indicating
otherwise, this Court is not going
to allow any compensation for out-
of-state attorneys. So that - -

I understand that.

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14 MR. GOODMAN:

15 THE COURT:

So if you appear and represent
him, you are doing it and looking
for compensation from other than the
Court or other than the State of
New York.

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20 MR. GOODMAN:

I understand that that's the
Court's position. I merely wanted
to reserve the issue on the record.

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23 THE COURT:

You certainly have the right to

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reserve it on the record. And it's
acknowledged.

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3 MR. GOODMAN:

I understand.

4 THE COURT:

All right. Then we'll put you
down, Mr. Goodman. What's your
zone number up there?

5
6
7 MR. GOODMAN:

48226.

8 THE COURT:

48226. And you have a telephone
number?

9
10 MR. GOODMAN:

Yes. 965-0050.

11 THE COURT:

And you are aware, are you,
that these cases - - this one in
particular, was recessed until
April the 29th and that at the
calendar call the Attorney General
moved all of the cases on the
calendar ready for trial. It was
brought out that there was a
discovery motion that had not been
supplied; it was also indicated at
the time that the material was
presently -- most of it available
and the rest of it would be available

very shortly. The Court indicated to the defendant that if they made an honest and sincere effort to be ready for trial by April the 29th, and were in a position to show what efforts had been made, and to indicate there was additional things that had to be done before he was ready for trial, the Court would take that into consideration April the 29th. But absent such a situation, I expect you to be ready to go to trial on that date.

MR. GOODMAN:

I should advise the Court, as of this point all I have been able to do until I made the decision to come into the matter was to talk to my client. And there were circumstances which were not completely perfect for a full understanding, even, of his views in this very complex thing. And I have not had any chance, as yet, to even look at

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the discovery, let alone file the necessary motion. But I will consult with counsel who are familiar with it and seek to move ahead as rapidly as the circumstances permit me to do it.

THE COURT:

As you are probably aware, I believe that the transcripts have been furnished to the defendant for all proceedings up to this point.

DEFENDANT:

I would like to have some clarity to the 42 Indictment. Monday, February the 25th, I was brought to court on 42, but I mentioned, at that time, that 42 hadn't - - then you hadn't been decided for 42, and at that time you took it off the calendar.

THE COURT:

That's correct.

DEFENDANT:

So, what you are saying now, in regards to the discovery, et cetera, et cetera, right, is not related to 42 Indictment, it's

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related to 38 and 41, if I recall correctly.

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3 THE COURT:

42 is still in Wyoming County?

4 I do not have that indicated as
5 such on this calendar - - yes I do,
6 yes, I do. I have it marked over
7 on the right-hand side that it has
8 not been moved.. I can advise you
9 that in all probability a motion
10 for change of venue will be made,
11 and you will get notice of that.

12 MR. GOODMAN:

I assume that the Attorney
General will move in that direction.

14 THE COURT:

I assume he will. That's been
the past procedure.

16 MR. GOODMAN:

All right.

17 THE COURT:

Anything further you wish to
put on the record?

19 MR. GOODMAN:

Could a copy of this proceeding
be made available to me?

21 THE COURT:

Granted.

22 MR. GOODMAN:

Thank you.

23 MR. COHEN:

Judge, could I just clarify

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one point?

THE COURT:

Yes.

MR. COHEN:

You stated earlier that the transcripts are being provided for all cases, does that apply throughout this last case?

THE COURT:

In the individual cases, yes. With the exception of that portion that was general at the beginning and which I am giving two copies to Mr. Jelinek.

MR. COHEN:

But transcripts for everything else - -

THE COURT:

That is on the individual basis they will be given to the individual defendants.

MR. COHEN:

Okay.

THE COURT:

Anything further?

MR. BUSH:

I don't believe we have anything else today.

THE COURT:

Okay, we'll stand in recess until Monday morning at 10:00 o'clock.

(Whereupon, the Court was in recess at 2:45 p.m.)

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

GEORGE BEDROSIAN et al.,

Plaintiffs

-vs-

JOSEPH MINTZ, etc., et al.,

Defendants

MOTION FOR SUMMARY
JUDGMENT

Civ. 74-286

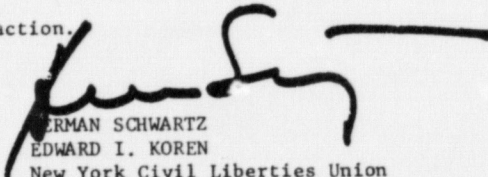
Plaintiffs hereby move this Court at a motion term to be held on October 29, 1974, at 10:00 a.m., at the United States Courthouse, Buffalo, New York, for an order pursuant to F. R. Civ. Proc. 56(a), granting plaintiffs summary judgment in the above-entitled matter and:

(1) DECLARING that the attorney-plaintiffs are entitled to compensation to the same extent as counsel appointed for indictees who are members of the New York Bar;

(2) ORDERING that defendant Ball appoint the attorney-plaintiffs and members of their class as counsel for the indictee-plaintiffs and members of their class, pursuant to New York County Law §18-b;

(3) ORDERING defendants Mintz and the Erie County Bar Association to Aid to Indigent Prisoners Society, Inc./pay the attorney-plaintiffs for their services in the Attica indictments to the same extent as counsel who are members of the New York State Bar; and

(4) DECLARING this a class action.



HERMAN SCHWARTZ
EDWARD I. KOREN
New York Civil Liberties Union
Foundation
525 O'Brian Hall
SUNYAB North Campus
Amherst, New York 14260
(716) 636-2091

Of Counsel

DATED: October 22, 1974
Amherst, New York

TO: DOUGLAS CREAM, ESQ.
Assistant Attorney General
State of New York
65 Court Street
Buffalo, N. Y. 14202

2300 Erie County Bank Building
Buffalo, N. Y. 14203

RICHARD GRIFFIN, ESQ.
Attorney for Erie County Bar Association

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

11/27/71
93a

GEORGE BEDROSIAN et al.,

Plaintiffs

AFFIDAVIT

-vs-

Civ. 74-286

JOSEPH MINTZ, etc., et al.,

Defendants

State of New York)
County of Erie) ss.:
Town of Amherst)

HERMAN SCHWARTZ, being duly sworn, deposes and says:

I am the attorney for the plaintiffs in the above-captioned matter,
and I make this affidavit in support of plaintiffs' motion for summary
judgment.

Admitted
1. Plaintiffs include two groups: attorneys admitted to the
bar in states other than New York, and indictees in criminal cases growing
out of the September 9-13 uprising at Attica whom the attorney-plaintiffs
represent.

(a) Plaintiff GEORGE BEDROSIAN is an attorney duly licensed
to practice law in the State of Michigan and is an attorney duly admitted
pro hac vice to represent plaintiff THOMAS HAGAN in the Supreme Court, State
of New York, County of Erie, on charges arising out of the rebellion at
Attica Correctional Facility which took place between September 9-13, 1971.

(b) Plaintiff THOMAS HAGAN is presently incarcerated at Attica
Correctional Facility and is under indictment by a Special Grand Jury from
the County of Wyoming on charges stemming from his alleged involvement in
the September, 1971, uprising at Attica.

(c) Plaintiff ROBERT HANDELMAN is an attorney duly licensed to
practice law in the State of Ohio and is an attorney duly admitted pro hac
vice to represent plaintiff BERNARD SHIPMAN in the Supreme Court, State of
New York, County of Erie, on charges arising out of the rebellion at Attica
Correctional Facility which took place between September 9-13, 1971.

(d) Plaintiff BERNARD SHIPMAN is presently incarcerated at Attica
Correctional Facility and is under indictment by a Special Grand Jury from

the County of Wyoming on charges stemming from his alleged involvement in the September, 1971, uprising at Attica.

(e) Plaintiff WALTER WILLIAMS is an attorney duly licensed to practice law in the State of Illinois and is an attorney duly admitted pro hac vice to represent Plaintiff OTIS McGAUGHY (OMAR SEKOU TOURE) in the Supreme Court, State of New York, County of Erie, on charges arising out of the rebellion at Attica Correctional Facility which took place between September 9-13, 1971.

(f) Plaintiff OTIS McGAUGHY (OMAR SEKOU TOURE) is presently incarcerated at Attica Correctional Facility and is under indictment by a Special Grand Jury from the County of Wyoming on charges stemming from his alleged involvement in the September, 1971, uprising at Attica.

2. (a) Defendant JOSEPH MINTZ is the Administrator of the Erie County Bar Association Aid to Indigent Prisoners Society, Inc., and as such, has the responsibility and authority for approving payments to counsel representing indigent defendants facing felony trials in Erie County, including the indigtee-plaintiffs herein.

(b) Defendant ERIE COUNTY BAR ASSOCIATION AID TO INDIGENT PRISONERS SOCIETY, INC., is a business corporation duly incorporated under the laws of New York and is chartered to disburse monies to counsel representing indigent defendants facing felony trials in Erie County, including the indigtee-plaintiffs herein.

Admitted (c) Defendant CARMAN F. BALL is Justice of the Supreme Court of the State of New York, County of Erie, and presides over the Attica Term.

Admitted 3. (a) Commencing on or about July 30, 1973, defendant Hon. Carman Ball, J.S.C., admitted and appointed attorneys for the defense of persons indicted for charges growing out of the Attica uprising of September 9-13, 1971; the appointments were pursuant to County Law §18-b. Information provided your deponent by the Attica Brothers Legal Defense indicates that some 42 attorneys were appointed.

Indigtee (b) In all cases referred to herein, the defendants in the criminal cases were, in fact, indigent.

(c) The State of New York has appropriated the sum of \$750,000 for the defense of the Attica cases.

(d) As a result of the assignments and admittances, the above-described attorneys fell into three categories:

(i) Those admitted pursuant to County Law §18-b who are members of the Erie County and New York State Bars, and who were drawn from the county list of attorneys available to take cases.

Admitted
(ii) Those admitted pursuant to County Law §18-b who are members of the New York State Bar but not of the Erie County Bar, and who were not drawn from the county list of area attorneys available to take indigent criminal cases. The majority of these attorneys are from New York City.

(iii) Those admitted pursuant to the Court of Appeals Rules for Admission of Attorneys, Rule 520.8, admission pro hac vice, who are not members of the New York State or Erie County Bars, but who are members of the Bar in the state where they are licensed to practice law.

(e) These attorneys are all counsel-of-choice in that their clients requested their representation.

Admitted
4. (a) Defendant Ball refused to appoint any attorneys who were not members of the Bar of the State of New York, although he agreed to admit them pro hac vice. He has therefore admitted the attorney-plaintiffs pro hac vice.

Deponent
(b) The refusal to appoint and assign the attorney-plaintiffs herein is based solely on the fact that they are not members of the Bar of the State of New York.

Deponent
(c) Counsel who are appointed will have their time and expenses compensated to the extent that the Court deems such compensation is reasonable. Counsel who are not appointed will have to contribute their time without any compensation and will have to find ways to defray their expenses, either from their own pockets or otherwise. So far, the attorney-plaintiffs in this matter have contributed both time and expense money.

Deponent
5. (a) Prior to July 30, 1973, your deponent had a conversation with defendant Ball in which the latter informed your deponent that he would not appoint any attorneys who were not members of the New York State Bar under County Law §18-b, but might consider them for admittance pro hac vice pursuant to Court of Appeals Rules for Admission of Attorneys, Rule 520.8(d)(1).

36a

Defendant further informed your deponent that in order for an attorney to be considered for such admittance pro hac vice, the attorney would have to submit an affidavit setting forth his background and experience in criminal cases, indicating the courts and judges before whom he had appeared, as well as his willingness to consult and associate with New York State attorneys and designating their names; defendant Ball further noted that upon receipt of such papers, he would consider whether to admit such attorney(s) pro hac vice.

Deponent
(b) Pursuant to such conversation, the contents of which were communicated to the central office of the Attica defense, all attorneys who sought admittance pro hac vice at or about that time and subsequently, have submitted such affidavits (sample copies thereof are attached to this affidavit as Exhibits A1 and A2, including an affidavit from plaintiff Walter Williams). A complete list of attorneys, addresses and defendants is attached hereto as Exhibit B.

Admitted
6. Attorneys who have been retained and admitted pro hac vice are members of the Virginia, Massachusetts, Ohio, Michigan, and Illinois Bars, and have their offices in Alexandria, Virginia, Boston and Cambridge, Massachusetts, Columbus and Cleveland, Ohio, Detroit, Michigan, and Chicago, Illinois, respectively.

Admitted
7. (a) With respect to attorneys who are members of the New York State Bar, no inquiry was made respecting either their competence, their present location, or their distance from Buffalo.

Admitted
(b) Nor was any inquiry made by defendant Ball of any lawyer not a member of the New York State Bar, including the plaintiffs herein, about the expenses involved in his representation of any defendant, including the plaintiffs herein.

Deponent
8. Certain members of the New York State Bar who were appointed live in Boston, Massachusetts, and West Hartford, Connecticut, respectively. Thus, Margaret Burnham, who was admitted on May 20, 1974, has an office at 2 Park Square, Boston, Massachusetts, and Morton Cohen, who was admitted in 1973, has an address at the University of Connecticut School of Law, West Hartford, Connecticut.

Admitted
9. Of the 42 attorneys who were assigned to the Attica cases, 13 live in New York City, 3 live in the Albany-Troy area, 4 live in other towns in New York State. These are in addition to the two above-described in Massachusetts and Connecticut.

10. (a) The round-trip air fare from New York City to Buffalo is \$73.68.

(b) The round-trip air fare from Albany to Buffalo is \$62.73.

(c) The round-trip air fare from West Hartford, Connecticut, to Buffalo is \$86.73.

(d) The round-trip air fare from Boston, Massachusetts, to Buffalo is \$86.73.

(e) The round-trip air fare from Washington, D. C., to Buffalo is \$73.68.

(f) The round-trip air fare from Cleveland, Ohio, to Buffalo is \$54.73.

(g) The round-trip air fare from Detroit, Michigan, to Buffalo is \$60.73.

(h) Weekend excursion rates are proportionately lower by approximately 25%.

11. Pursuant to County Law §18-b, the court has discretion to award only such fees and disbursements as it considers reasonable.

12. (a) Pursuant to Court of Appeals Rules for Admission of Attorneys, Rule 520.8(d)(1), admittance of attorneys pro hac vice is in the discretion of the court and such discretion includes a determination that the attorneys in question are qualified to handle the defense.

(b) Defendant Ball had an obligation under Court of Appeals Rule 520.8 to exercise his discretion so as to insure that the attorneys admitted pro hac vice were qualified to represent the defendants, and he fulfilled that obligation by insisting upon and considering the affidavits submitted by the attorney-plaintiffs herein.

13. (a) Upon information and belief, defendant Ball made such determination in this case upon consideration of the affidavits from applicants for admission pro hac vice, which affidavits he insisted upon.

(b) In addition, in some cases, defendant Ball asked certain attorneys not admitted in New York orally and in open court whether they had experience in criminal cases. See, e.g., p. 3 of Exhibit II to defendants' affidavit in support of motion to dismiss.

38a

14. In some instances, e.g., Ernest Goodman's representation of Bernard Strobe, a/k/a Shango, the attorney in question was approached by the family and asked to represent the indictee involved.

Dup 15. (a) The Bar Associations of Massachusetts, Virginia, Ohio, Michigan, and Illinois, of which plaintiffs and members of their class are members, all have authority to discipline lawyers who engage in misconduct in other jurisdictions.

(b) The Bar Associations of Massachusetts, Virginia, and Ohio have taken action with respect to members of their Bar who have been guilty of misconduct in other jurisdictions, including but, upon information and belief, not limited to the Watergate defendants. See 8 Juris Doctor, No. 4, pp. 37, 38-39 (September 1974), attached hereto as Exhibit I.

Admitted 16. The result of defendant Ball's policy is that Attica defendants whose attorney-of-choice is a member of the New York Bar are enabled to have counsel appointed for them, whereas those whose attorney-of-choice is not a member of the New York Bar cannot have counsel appointed for them.

Admitted 17. It is common for attorneys to represent criminal defendants in courts throughout the nation, even though such attorneys are not members of the Bar of the State in which the trial is taking place.

Herman Schwartz
HERMAN SCHWARTZ

Sworn to before me this

22nd day of October, 1974

Laura Zeisel
Notary Public

LAURA ZEISEL
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 1975

Ex. A-1

39a

ADDITIONAL SPECIAL AND TRIAL TERM
OF THE SUPREME COURT OF THE
STATE OF NEW YORK
COUNTY OF ERIE

THE PEOPLE OF THE STATE OF NEW YORK)
)
)
 V)
)
)
 OTIS MCGAUGHY,)
 WILBUR JOHNSON,)
 HERBERT DEAN and)
 RONALD COOKE,)
)
 Defendants.)

INDICTMENT NOS:
18/1972
34/1972

A F F I D A V I T

WALTER WILLIAMS, being first duly sworn, on oath deposes and says as follows:

1. That he is an attorney duly licensed under the laws of the State of Illinois.
2. That he is a partner in the law firm of Williams and Slaughter, 2600 South Michigan Avenue, Chicago, Illinois 60616: 312 - 842-7737
3. That he was admitted to practice in the State of Illinois on April 23, 1970 by the Illinois Supreme Court.
4. That he has also been admitted to practice before The U. S. District Court and The U. S. Court of Appeals, 7th Circuit.
5. That he has been retained by Mrs. Carrie Williams, Chicago, Illinois to represent her son, OTIS LEE MCGAUGHY in the above entitled cause.
6. That since his admission to the law practice he has had extensive experience in the trial of misdemeanor and felony offenses, including the trial of excess of ten (10) homicides.
7. That Counsel has appeared and practiced before the following Circuit Court Judges on felony matters:
 - a. James H. Bailey
 - b. Robert J. Collins
 - c. Robert J. Downing

40a

- d. Saul A. Fenton
- e. Richard J. Fitzgerald
- f. John F. Hechinger
- g. Wayne W. Olson
- h. Maurice D. Pomroy
- i. Albert S. Porter
- j. Earl E. Stravhorn
- k. Harry D. Strouse, Jr.
- l. Kenneth F. Wilson

8. That Counsel has not represented anyone in New York State, however, Counsel represents to this court that he has studied and researched the law of the State of New York as it applies to the indictment and facts of this case.

9. That Counsel will represent the defendant, OTIS LEE MCGAUGHY in consultation with two New York State Attorneys, namely:

- a. Paul G. Chevigny
- b. Herman Schartz

10. That Counsel requests that Donald L. Jelinek, P. O. Box 671, Auburn, New York 13021 serve as local counsel in the above entitled cause until such time as this matter is set for trial.

Respectfully Submitted:

WALTER WILLIAMS, Counsel for
Defendant, OTIS LEE MCGAUGHY

SUBSCRIBED AND SWORN TO
BEFORE ME THIS _____ OF
JULY, 1973.

NOTARY PUBLIC

Ex. A-2

SUPREME COURT OF NEW YORK
WYOMING COUNTY - ATTICA TERM

4/12

STATE OF NEW YORK,

vs.

BERNARD STROBLE, a/k/a BERNARD SHANGO,

Defendant

Indictment #39/72

NOTICE OF APPEARANCE AND
APPLICATION FOR FEES AND
EXPENSES

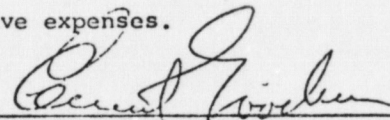
NOTICE OF APPEARANCE AND APPLI-
CATION FOR FEES AND EXPENSES

I, ERNEST GOODMAN, hereby enter my appearance as attorney for BERNARD STROBLE. My qualifications are set out in the affidavit annexed to this motion.

I have already entered my appearance on behalf of the Defendant, BERNARD STROBLE. In entering my appearance, I advised the Court that I would undertake to represent the Defendant in this case, whether I eventually received a fee or not. However, I expressly reserve the right to petition to this Court for a fee on the ground that the Defendant whom I represent is indigent and that he is unable to retain an attorney or to pay the expenses in connection with the preparation and trial of this case.

Therefore, I request that this Court:

1. Appoint me to represent BERNARD STROBLE pursuant to County Law 18-b, thereby providing for attorney's fees and expenses;
2. Appoint an investigator pursuant to County Law 18-b;
3. And provide for investigative expenses.



ERNEST GOODMAN
3200 Cadillac Tower
Detroit, Michigan 48226
(313) 963-0050

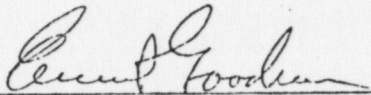
STATE OF MICHIGAN

42a

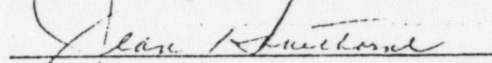
ss.

COUNTY OF WAYNE

ERNEST GOODMAN, being first duly sworn, deposes and says that he has read the foregoing Application for Fees and Expenses by him subscribed and that the contents thereof are true to the best of his knowledge and belief.


ERNEST GOODMAN

Subscribed to and sworn before me
this 26th day of March, 1974.



Notary Public, Wayne County, Mich.
My Commission Expires: 6-22-75

JEAN HAWTHORNE
Notary Public, Wayne County, Mich.
My Commission Expires June 22, 1975

SUPREME COURT OF NEW YORK
WYOMING COUNTY - ATTICA TERM

43a

STATE OF NEW YORK

vs.

Indictment #39/72

BERNARD STROBLE, a/k/a BERNARD SHANGO

AFFIDAVIT

Defendant

STATE OF MICHIGAN)

) ss.

COUNTY OF WAYNE)

ERNEST GOODMAN, being first duly sworn, deposes and says
the following:

1. That he was admitted to practice law as a member of the
State Bar of Michigan in September of 1928.

2. That he has had extensive trial and appellate experience
for the following courts:

- a) Circuit Courts for the State of Michigan;
- b) Records Court for the City of Detroit;
- c) United States District Court for the Eastern District
of Michigan;
- d) Common Pleas Court in the City of Detroit;
- e) Numerous administrative hearing boards, including
the National Labor Relations Board.

3. That he has argued numerous appeals before the following
appellate courts:

- a) United States Supreme Court;
- b) United States Court of Appeals for the Sixth Circuit;

c) Michigan Supreme Court

d) Michigan Court of Appeals.

44a

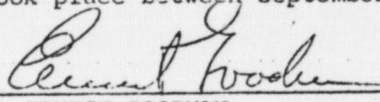
4. That as references, he submits the names of the Honorable Charles Levin, Justice of the Michigan Supreme Court; Honorable Vincent Brennan, Judge of the Michigan Court of Appeals; Honorable James Montante, Judge of the Circuit Court for County of Wayne; and the Honorable George W. Crockett, Jr., Judge for the Recorder's Court of the City of Detroit.

5. That he has had wide trial experience, having tried numerous civil and criminal cases.

6. That his criminal experience includes having tried numerous felony cases, including murder cases, conspiracy cases, numerous other serious felony cases, and homicide court martials.

7. That he has no specific familiarity with the law of the State of New York.

8. That he intends to associate with Donald Jelinek, a member of the Bar of the State of New York and other attorneys associated with Donald Jelinek, who are participating in the defense of persons charged with various felonies arising out of the rebellion at Attica Prison which took place between September 9-13, 1971.

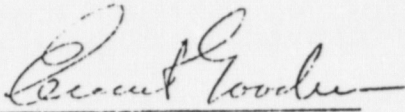

ERNEST GOODMAN

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

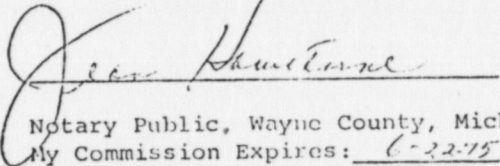
ERNEST GOODMAN, being duly sworn, deposes and says that he read the foregoing Affidavit by him subscribed, and that the

as thereof are true to the best of his knowledge
and belief.

45a


ERNEST GOODMAN

Subscribed and sworn to before
me this 26th day of March, 1974.


Notary Public, Wayne County, Mich.
My Commission Expires: 6-22-75

JEAN HAWTHORNE
Notary Public, Wayne County, Mich.
My Commission Expires June 22, 1975

DEFENSE ATTORNEYS - DISTRICT I DISTRICT
April 23, 1974

Ex. B 46a

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47a

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Lewis Steel
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New York, NY 10013
212/966-9620

Schwartz
48a

TRIAL LAWYERS--ATTICA INDICTMENTS
April 12, 1974

Indict- ment No.	Defendant	Defense Attorney
1	Charles Pernasilice	Ramsey Clark, Herman Schwartz
1	John Hill	William Kunstler, Patrick Baker
2	Armstrong John (Atuma Abdul)	Philip Abramowitz
3	Milton Jones (Babu Baba Babatunje)	Tom O'Connor, E. Stuart Jones, Jr.
4	John Wallace	
5	Armstrong John (Atuma Abdul)	Philip Abramowitz
5	Milton Jones (Babu Baba Babatunje)	Tom O'Connor, E. Stuart Jones, Jr.
5	John Wallace	
5	Steve Garrett (JaJa Kareem)	James Donnelly
5	Jose Quinones (Papo)	Dennis Cunningham, Michael Deutsch
5	Bernard H. Shipman	Robert F. Handelman
5	James Brown (Alsayah Allah)	Joseph R. Mack
5	Chris Reed (Oji Kwesi Sekou)	Jim Carroll
5	Frank Smith (Big Black)	<u>pro se</u>
5	Richard Clark	<u>pro se</u>
5	Bernard Strobble (Shago Bahati Kakawana)	<u>pro se</u>
5	Roger Charpen	<u>pro se</u>
5	Richard Billolo	<u>pro se</u>
5	Edward Dingle (Kimathi Mpingo)	Richard Lippes
5	Robert Johnson	Thomas Artzell
5	James Richey	Paul Birzon
5	Eric Thompson (Jomo Sekou Omowale)	Vincent Doyle, Jr.
6 1/2	Mariano Gonzales (Dalou)	Barbara Handschu, William Kunstler
7	Anthony	Abraham Singer
7	Carl Jones (Tariq)	Thomas Labin
7	Milton Jones (Babu Baba Babatunje)	William Goodman
7	William Ortiz (Torriano)	Neal Bush
7	Verdell Turner	Carl Bernstein
7	Alphonso Ross	Sean Hill
8	Ronald Lyons	Jesse Berman
8	William Ortiz (Torriano)	Neal Bush
8	Alphonso Ross	Sean Hill
8	Raymond Sumpter	Marvin Miller, Alan Cilman
9	Milton Jones (Babu Baba Babatunje)	William Goodman
9	Ray Sumpter	Marvin Miller, Alan Cilman
10	James Richey	Paul Birzon
10	Michael Phillips (JaJa Nkomo Kalome)	
10	Ernest Richey	Richard Soble
10	Willie Stokes (Ken-Du)	Ken McGill
10	Ruiz Quintana	Morton Cohen
10	John Mitchell	
10	Robert Miles	Philip McBride
10	Robert Gili	Phillip Thielman
10	Robert Degarm	Peter Parrino
10	Thomas Hagen	George Cedrosian
11	Joe Little	Emily Jane Goodman
11	Steven Markle	Harold Boreanaz
12	Ronald Lyons	Jesse Berman
13	Chris Santiago	Richard Rosche
14	William Wesley (Shate Nkruma)	
15	Leon McDonald (Jasiri Hodari Musyoha)	Salvatore Martoche
15	Frank Smith (Big Black)	<u>pro se</u>
15	Bernard Strobble (Shago Bahati Kakawana)	<u>pro se</u>

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15	Edward Dingle (Kimanthi Mpingo)	Richard Lippes
15	Eric Thomson (Jomo Sekou Omowale)	Vincent E. Doyle, Jr.
15	Richard Billelo	<u>pro se</u>
15	Jose Quinones (Papo)	Dennis Cunningham, Michael Deutsch
15	James Moore (Rahaam Karanja)	Leonard Klaif
16	Robert Johnson	Thomas Hartzell
17	William Ortiz (Torriano)	Neal Bush
17	William Wesley (Shate Nkruma)	
18	Otis McGaughy (Omar Sekou Toure)	Walter Williams
18	Wilbur Johnson (Jusmeallah Allah)	
18	Herbie Scott Deane (Akil Al-Jundi)	Paul Chevigny
18	Ronald Coynes	George Doyle
19	John Hill	William Kunstler
20	Peter Galvin	Stan Collesano
20	Greg Felder	Richard Skutt
21	Raymond Jackson	Norman Effman
21	William Wilson	David Blackstone
24	Calvin Hudson	Dennis Schlenker
25	William Outlaw	Carl Doboizin
26	Richard Wright	Christopher T. W. Ross
27	Willie Smith	James L. Kemp
28	Robert Johnson	Thomas Hartzell
29	Alfred Plummer	Martin R. Stolar
30	Alphonso Ross	Sean Hill
31	William Ortiz (Torriano)	Neal Bush
32	Alphonso Ross	Sean Hill
33 1/2	James Moore (Rahaam Karanja)	Leonard Klaif
34	Otis McGaughy (Omar Sekou Toure)	Walter Williams
35	Vernon LaFranque	Tony Walsh
36	Wilbur Johnson (Jusmeallah Allah)	
38	Frank Smith (Big Black)	<u>pro se</u>
38	Bernard Strobe (Shango Bahati Kakawana)	<u>pro se</u>
38	Roger Champen	<u>pro se</u>
38	Herbert X. Blyden	Paul Chevigny
38	Eric Thompson (Jomo Sekou Omowale)	Vincent E. Doyle, Jr.
		Elizabeth Gaynes
39	Eric Thompson (Jomo Sekou Omowale)	Vincent E. Doyle, Jr.
		Elizabeth Gaynes
40	Richard Fisher (Baba)	<u>pro se</u>
41	Frank Smith (Big Black)	<u>pro se</u>
41	Bernard Strobe (Shango Bahati Kakawana)	<u>pro se</u>
41	Roger Champen	<u>pro se</u>
41	Herbert X. Blyden	<u>pro se</u>
41	Eric Thompson (Jomo Sekou Omowale)	Vincent E. Doyle, Jr.
		Elizabeth Gaynes
42	Bernard Strobe (Shango Bahati Kakawana)	Ernest Goodman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

500

GEORGE BEDROSIAN and THOMAS HAGAN,
ROBERT HANDELMAN and BERNARD SHIPMAN,
WALTER WILLIAMS and OTIS McGAUGHY
(OMAR SEKOU TOURE), and all others
similarly situated,

AFFIDAVIT IN
OPPOSITION

Plaintiffs,

-vs-

CIV-74-286

JOSEPH MINTZ, Administrator, Erie County
Bar Association Aid to Indigent Prisoners
Society, Inc.; the ERIE COUNTY BAR
ASSOCIATION AID TO INDIGENT PRISONERS
SOCIETY, INC.; and CARMAN F. BALL, Justice
of the Supreme Court and Presiding Judge
of the Supreme Court and Presiding Judge
of the Additional Special Trial Term of
the Wyoming County Court, in his represen-
tative and individual capacity,
Defendants.

STATE OF NEW YORK)
COUNTY OF ERIE) SS.:
CITY OF BUFFALO)

DOUGLAS S. CREAM, being duly sworn, deposes and
says the following:

1. That he is an Assistant Attorney General, of
Counsel to LOUIS J. LEFKOWITZ, Attorney General of the State
of New York, attorney for Defendant Justice Carman F. Ball.

2. That this affidavit is submitted in opposition
to the motion of plaintiffs for summary judgment.

3. That the information contained herein is based
upon discussions had between your deponent and Defendant
Justice Ball.

4. That Defendant Justice Ball does not dispute
the facts alleged in paragraphs 1(a) - (f), 2(c), 3(a), (d),
4(a), 6, 7, 9, 10, 11, 16 of the affidavit of Herman Schwartz,
sworn to on the 22nd day of October, 1974.

5. That the allegations of fact contained in para-
graphs 3(b), (c), (e), 4(b), (c), 5(a) and (b), 8, 12, 13,
15, and 17 are disputed by Defendant Justice Ball.

6. That by Chapter 992 of the Laws of 1974 (annexed
hereto as Exhibit "1"), the Legislature of the State of New
York appropriated \$1,850,000.00 "for the payment of grand
jury and other necessary and proper prosecution expenses in

5/a

accordance with the provisions of the Correction Law.

7. That Section 606 of the Correction Law provides that among the proper expenses for the prosecution of inmates charged with crimes committed while inmates, is the payment of assigned counsel.

8. That there is not now, nor has there ever been a sum of money (alleged in the affidavit of October 22, 1974 to be \$750,000.00) set aside or appropriated exclusively for the payment of assigned counsel fees.

9. That Section 520.6(d) of the Rules of the Court of Appeals refers only to the admission of attorneys pro hac vice who are employed by a defendant; it does not refer to assigned counsel.

10. That at all times local counsel was and continues to be available for assignment pursuant to the County Law.

11. That at no time has Justice Ball ruled on or formed opinion about the competence of attorneys admitted pro hac vice. Section 520.8 does not require such a ruling.

12. That the affidavits received by Justice Ball from attorneys seeking admission pro hac vice were received in order that Justice Ball could satisfy himself that those persons were in fact attorneys admitted to practice in their respective states.

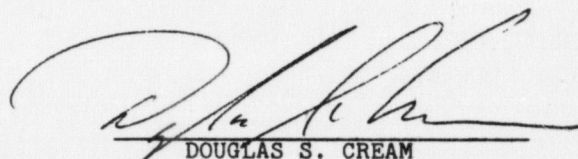
13. That the air fares as listed in paragraph 10 of the affidavit of October 22, 1974 are irrelevant in that Justice Ball can not know whether an attorney from San Francisco, Houston, Texas, or other remote jurisdiction will present himself for assignment to an indigent defendant.

14. That for the reasons as set forth in the August 26, 1974 affidavit of Justice Ball, the decision was made, in the exercise of sound judicial discretion, not to assign out-of-state counsel.

WHEREFORE, your deponent respectfully requests that

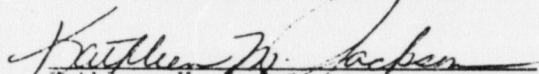
52a

this Court enter an order denying plaintiffs' motion for summary judgment and grant defendant's motion to dismiss, or in the alternative, grant summary judgment for defendant, and additionally, grant such other and further relief as to the Court may seem just and proper.



DOUGLAS S. CREAM

Subscribed and sworn to before me
this 22nd day of November, 1974.



Kathleen M. Jackson
Commissioner of Deeds, Buffalo, N.Y.
Commission expires December 31, 1974.

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CHAPTER 992, LAWS OF 1974 NEW YORK STATE

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1 such city's fiscal year commencing July first, nine-
2 teen hundred seventy-four includes appropriations
3 in the aggregate sum of five million two hundred
4 twenty-two thousand seven hundred and ten dollars
5 (\$5,222,710) for that portion of the preceding pro-
6 grams established by this act to be carried out in
7 such city] provides sufficient funds to finance 55
8 percent of the costs of continuing to operate the
9 emergency felony court program and 50 percent of
10 the costs of continuing to operate the emergency
11 narcotics court program.....[32,963,610] 35,298,610
12 For apportionment to departments and agencies for
13 services and expenses to investigate and alleviate
14 problems and related matters caused by fuel and
15 energy shortages.....[350,000] 550,000
16 For the payment of grand jury and other necessary
17 and proper prosecution expenses in accordance with
18 the provisions of the correction law.....[250,000] 1,850,000
19 For services and expenses of manpower development
20 and training and for state participation in affirma-
21 tive action programs, including costs of administra-
22 tion, institutional training, individual referral
23 training, payments to sponsors for on-the-job train-
24 ing and training, subsistence and travel allowances
25 to trainees. The allowance to be paid shall be deter-
26 mined by the industrial commissioner with the

RECEIVED

OCT 30 1974
N. Y. S. DEPT. OF LAW
BUFFALO OFFICE

Attire

Exh. b. + "1"

54a

ERIE COUNTY BAR ASSOCIATION AID
TO INDIGENT PRISONERS SOCIETY INC

JOSEPH D. MINTZ
ADMINISTRATOR

September 14, 1973

305 PRISBANE BUILDING
BUFFALO NEW YORK 14203
RBG 8804

Hon. Frederick M. Marshall
Administrative Judge for Criminal Justice
2th Judicial District
Supreme Court Chambers, Fourth Floor
Erie County Hall
Buffalo, New York 14202

Re: Attica Defendants

Dear Justice Marshall:

As you are well aware, the Attica trials are fast approaching and this office, at your request and pursuant to instructions from the Board of Directors of the Bar Association has secured and is attempting to secure counsel ready, willing and able to serve individual defendant, or assigned counsel. In my conversations with various prospective attorneys, with reference to these matters, certain questions have arisen which require clarification. Obviously, we would be in a better position to find lawyers willing to serve if they knew the ground rules under which they were operating.

It is my understanding that the legislative conflict with reference to County Law Sec. 722 and the Correction Law has not been resolved and further, that the only specific Attica legislation passed is Senate Bill 6181 (now Chapter 590 Laws of 1973). With reference to said legislation, it is obvious to me that additional legislation might not be required and County Law Sec. 722 could be used provided an understanding was reached with reference to payment of fees and administration of the same and some assurance could be given that the cases would be treated as extraordinary cases under the requisite provision of that statute. Additionally, if new legislation is to be considered or the County Law amended, provision for partial payment (i.e. monthly) during the course of the trial, might be included in that the County Law provides for payment "upon conclusion of representation". (An addition such as the following might be appropriate "or periodically during the pendency of proceedings, as the trial judge may authorize"). Thus, the financial impact on volunteers might be softened and more attorneys may make their services available to the defendants.

If I can be of any assistance in attempting to resolve the problems and question, please do not hesitate to contact me. With kindest personal regards, I remain

Very truly yours,

ERIE COUNTY BAR ASSOCIATION AID
TO INDIGENT PRISONERS SOCIETY INC.

By _____
Joseph D. Mintz, Administrator

JDM/jb

cc: Hon. Carman Ball, Supreme Court Justice
cc: Hon. Harry Goldman, Presiding Justice
cc: Judicial Conference

cc: Michael Whiteman, Esq.
Counsel to Gov. Rockefeller
cc: Erie County Bar Association
cc: Sen. Thomas L. McGowan

STATE OF NEW YORK)
COUNTY OF ERIE) ss:
CITY OF BUFFALO)

55a

JOSEPH D. MINTZ, being duly sworn deposes and says:

That I am an attorney at law duly licensed to practice in the courts of the State of New York and am Administrator of the Erie County Bar Association Aid To Indigent Prisoners Society, Inc., the assigned counsel system in Erie County and have been so engaged since the inception of the Co-ordinated Assigned Counsel System in Erie County in 1962.

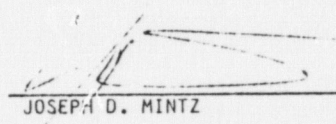
In my capacity as Administrator, I have been called upon by the Board of Directors of the Bar Association of Erie County, the Criminal Law Committee of said Association and various justices of the Supreme Court in Erie County with reference to the so-called "Attica Defendants" with a view toward securing counsel in this county ready, willing and able to represent said defendants as assigned counsel. At the present time, there are approximately a dozen lawyers serving individual Attica defendants as assigned counsel.

In an effort to secure additional lawyers, I have reviewed County Law Sec. 722, the Correction Law and also Chapter 590 of the Laws of 1973 and have personally and by telephone contacted a number of lawyers who regularly represent assigned defendants in this county in an effort to secure their cooperation in agreeing to accept, as assigned counsel, the representation of the various "Attica Defendants" presently under indictment. Various lawyers I have contacted have indicated to me that they are hesitant to accept to represent any Attica defendant as assigned counsel in view of the length of time the cases will consume, coupled with the uncertainties as to the amount of compensation involved and whether the said cases would be treated as extraordinary cases under the requisite statutes. Further questions have been raised in view of the verbiage of County Law Sec. 722 which provides for "payment upon conclusion of representation". Several lawyers have indicated that unless some arrangements could be made for periodic, i.e., monthly

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payment during the pendency of the proceeding to undertake a long and difficult case, ^{with} no payment of fees or expenses during the pendency of the proceeding would work a financial burden and hardship on an individual practitioner and, thus, for the reasons set forth herein, many lawyers have declined to volunteer to accept such assignments.

It is my judgement and I firmly believe that if the questions presented by prospective assigned attorneys were in fact clarified so that lawyers assigned could be assured that the cases would be treated as extraordinary cases and their fees would not be limited to \$500.00 and secondly, that an arrangement could be made for a periodic payment of fees to counsel during the pendency of the proceeding, then more lawyers would be amenable to and available for and would volunteer to represent the defendants involved.


JOSEPH D. MINTZ

Sworn to this day of
November, 1973.

[Faint, illegible text]

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

57a

Civil Action
CIV-74-286

GEORGE BEDROSIAN and THOMAS HAGAN,
ROBERT HANDELMAN and BERNARD SHIPMAN,
WALTER WILLIAMS and OTIS McGAUGHY
(OMAR SEKOU TOURE), and all others
similarly situated

Plaintiffs

-vs-

JOSEPH MINTZ, Administrator, Erie County
Bar Association Aid to Indigent Prisoners
Society, Inc.; the ERIE COUNTY BAR ASSO-
CIATION AID TO INDIGENT PRISONERS SOCIETY,
INC.; and CARMAN F. BALL, Justice of the
Supreme Court and Presiding Judge of the
Additional Special Trial Term of the
Wyoming County Court, in his representa-
tive and individual capacity

AFFIDAVIT

Defendants

STATE OF NEW YORK)
: SS.
COUNTY OF E R I E)

JOSEPH D. MINTZ, being duly sworn, deposes and says:

1. That he is one of the defendants in the above action as Administrator of the Erie County Bar Association Aid to Indigent Prisoners Society, Inc., a membership corporation which has undertaken to administer a plan in Erie County under Article 18-B of the N.Y. County Law to provide a plan for counsel duly assigned by the Court to represent persons accused of committing crimes and are unable to retain the services of counsel.

2. This affidavit is submitted to the Court on behalf of your deponent as Defendant Administrator and on behalf of the Erie County Bar Association Aid to Indigent Prisoners Society, Inc. in support of the motions by said defendants, joining with the motion dated October 17, 1974 made by the defendant Hon. Carman F. Ball, Justice of the New York Supreme Court, to dismiss the complaint herein under Rule 12(b)(6) and in opposition to the plaintiffs' motion dated October 22, 1974 for summary judgment.

under Rule 56(a).

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3. Your deponent has read the various papers before the Court upon these motions, including the complaint, affidavits of Douglas S. Cream and Hon. Carman F. Ball and Herman Schwartz, together with attachments and exhibits. In essence, it appears that plaintiffs seek an order invading the discretion of a Justice of the New York Supreme Court by requiring the Hon. Carman F. Ball to assign attorneys not admitted to practice in the State of New York to certain defendants in the Attica matter in order to enable such attorneys to be compensated under the assigned counsel plan, particularly Section 722-b of Article 18-B of the N.Y. County Law.

4. Your deponent functions in an administrative capacity for the Erie County assigned counsel plan. His principal duties are to assist the Court by coordinating various aspects of the program; to assist counsel in the preparation and processing of applications to the Court for payment for services and expenses; and to disburse funds to counsel upon receipt of an Order from the Court approving the amount for services and expenses and directing payment. The actual assignment of counsel is not done by your deponent but by the Justice of the Court having jurisdiction over the defendant who has been indicted. In most if not all instances of indictments arising out of the Attica matter, counsel for particular defendants have been assigned by the defendant Hon. Carman F. Ball who, upon information and belief, has been designated by the Appellate Division, Fourth Judicial Department, to preside over an additional Special Term of Supreme Court with respect to the Attica matters.

5. It is your deponent's position that the matter of assigning counsel is in the exclusive discretion of the Court. Your deponent has always understood the law to be that although

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an indigent defendant had a right to have counsel assigned, the defendant has no right to select a particular attorney, but the power to select and assign counsel is discretionary with the Court. The papers before the Court show that Justice Ball has determined to assign attorneys who have been admitted to practice in New York State and refused to assign attorneys who have not been admitted to practice in New York State. It is truly believed that the Court has the power to exercise its discretion in this respect and that such a criterion is a valid exercise of discretion by the Court and in no way deprives any indigent defendant of his right to have counsel assigned by the Court. Conversely, in order for the plaintiffs to prevail in this action it would necessarily mean that an indigent defendant not only has the right to have the Court assign counsel, but he also has the right to have the Court assign counsel of his choice.

6. As regards your deponent's affidavit of November 1973 and letter of September 14, 1973, copies of which have been supplied to the Court by Mr. Schwartz, plaintiffs' attorney, these were prepared in an effort to aid in obtaining fair compensation for counsel who would be assigned by the Court. At that time Section 722-b provided for payment "at the conclusion of the representation" and there was serious question whether periodic payments could be made, and question of whether the Court would grant amounts above the statutory limits (e.g., \$500 for a felony indictment). Accordingly, various attorneys raised these issues and your deponent was concerned about the matter and potential difficulties for counsel.

Upon information and belief, the restrictive language of Section 722-b was brought to the attention of many including Justices Marshall and Ball, the Fourth Judicial Department, Judicial Conference, Governor Rockefeller, Erie County Bar Asso-

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ciation and members of the New York Legislature. Upon information and belief, due to the efforts of many citizens and organizations the New York Legislature during its 1974 session amended Section 722-6 of Article 18-B to provide, effective May 1974,:

In extraordinary circumstances the court may provide for compensation in excess of the foregoing limits and for payment of compensation and reimbursement of expenses before the completion of the representation.

Also, upon information and belief, Chapter 992 of the Laws of 1974 authorized State funds to reimburse localities for the cost of trials conducted because of alleged commitment of offenses by inmates in State correctional facilities, and it is believed that there is approximately \$750,000 allocated to reimburse Erie County for funds advanced through the Erie County Bar Association Aid to Indigent Prisoners Society, Inc. However, the 1974 amendments did not change the program from assigned counsel nor authorize payment to attorneys other than those assigned by the Court.

7. The need to be assigned by the Court is recognized by plaintiffs in that they seek such relief in this action and in paragraph (2) of their motion: "(2) ORDERING that defendant Ball appoint the attorney-plaintiffs and members of their class as counsel for the indicted-plaintiffs and members of their class, pursuant to New York County Law Sec. 18-B".

Such assignment is a matter of discretion with the New York Supreme Court. Neither the defendants nor their attorneys have a right to control the Court's assignment or dictate whom should be assigned.

8. Upon information and belief, each of the plaintiffs attorneys and those they purport to represent as an alleged class were retained by the defendants they represent or volunteered such

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representation. Upon the attorneys being admitted for the limited purposes of the case by Justice Ball when their application for admission pro hac vice under the Court of Appeals Rules was granted, the Court in each instance, upon information and belief, carefully explained that it was not assigning the attorney and that the attorney could not expect payment. (See, e.g., pp. 6 et seq. of March 1, 1974 proceedings involving attorney Ernest Goodman attached to Justice Ball's affidavit). If an attorney from out-of-state has continued to represent a defendant he has not been misled nor has there been any promise of payment. Such continued representation has been on a basis other than assignment by the Court and after Justice Ball explicitly advised that he would only assign counsel admitted to practice in New York State.

9. There is no showing in plaintiffs' motion papers that the attorneys duly admitted to practice in New York State who have been, or who would be assigned to any defendant, are not fully competent to defend the charges asserted and to represent and protect the defendants' interests. There is no showing that there are not more than sufficient attorneys duly admitted to practice in New York State available to be assigned by the Court for such defendants. In your deponent's opinion there are more than a sufficient number of attorneys duly admitted to practice in New York State who can be assigned by the Court to Attica defendants who may need counsel.


10. In some instances the Court has accommodated the wishes of a defendant and assigned the attorney who was originally retained by the defendant after a showing of insufficient funds to retain counsel. However, in each instance these attorneys were admitted to practice in New York State, and it is the Court which is making the assignment on the basis of its discretionary

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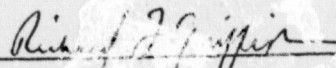
power; and always consistent with its policy of requiring as a qualification that counsel be admitted in New York State

11 In conclusion, your deponent truly believes that the Court has the power in its discretion to require all counsel to be assigned in this matter to be admitted to practice in New York State. Such a criterion is not arbitrary but is based upon sound judgment which assures that an attorney is qualified and is subject to the Court for his conduct and appearances. For this Court to rule that a Justice of the New York Supreme Court is required to assign as attorney to represent a defendant upon an indictment returned under New York law and to be tried in a New York Court where the attorney is not admitted to practice in New York, would not only be unwise but an improper invasion by the Federal Judiciary into the province of the New York Courts. Such a ruling would be tantamount to a holding that the right to counsel includes the absolute right of a defendant to select his counsel regardless of qualification. It would also make the State of New York and its Courts who are accountable for making the assignment, responsible for a choice over which its Justices may exercise no discretion.

WHEREFORE, your deponent prays that the defendants' motion to dismiss be granted.



Subscribed and sworn to before me
this 19 day of November, 1974


NOTARY PUBLIC
STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
COMMISSION EXPIRES 3-30-15

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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GEORGE BEDROSIAN et al.,

Plaintiffs,

Civ. Action CIV 74-286

-vs-

AFFIDAVIT

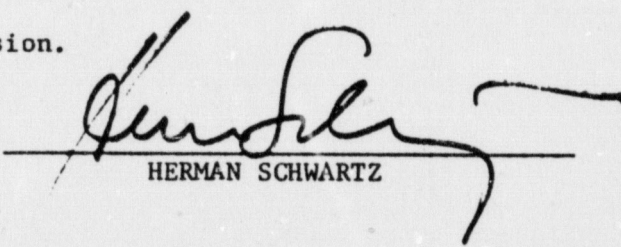
JOSEPH MINTZ, etc., et al.,

Defendants.

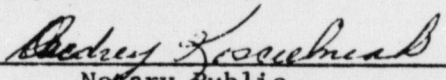
State of New York)
County of Erie) ss.:
Town of Amherst)

HERMAN SCHWARTZ, being duly sworn, deposes and says:

I spoke to Carman F. Ball, J.S.C., a defendant in this matter, on December 19, 1974, at 9:30 a.m. I asked him whether in his original order he had intended to deny Ernest Goodman, an out-of-state lawyer, travel and other expenses under County Law 722-c, as well as fees for services under §18-b. Defendant Ball informed me that he had indeed intended explicitly to deny such application and believed that he had in fact done so in his order of April 9, 1974. He indicated to me that he would be willing to sign any additional orders denying such an application, in order to reaffirm the original decision.


HERMAN SCHWARTZ

Sworn to before me this
2nd day of December, 1974


Notary Public

AUDREY KOSCIELNIAK
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 1976

ADDITIONAL SPECIAL AND TRIAL TERM
OF THE SUPREME COURT OF THE STATE
OF NEW YORK : COUNTY OF ERIE

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PEOPLE OF THE STATE OF NEW YORK

-vs-

Indictment #38/72

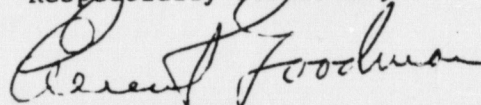
BERNARD STROBLE a/k/a BERNARD SHANGO,

APPLICATION

Defendant

ERNEST GOODMAN hereby applies, under County Law 722-c, for
his reasonable travel and other expenses in connection with his repre-
sentation of Bernard Stroble a/k/a Shango in Indictment #38/72.

Respectfully submitted,



ERNEST GOODMAN
3200 Cadillac Tower
Detroit, Michigan 48226

Of Counsel:

Herman Schwartz
525 O'Brian Hall
SUNYAB North Campus
Amherst, N. Y. 14260

DATED: December 18, 1974

ADDITIONAL SPECIAL AND TRIAL TERM
OF THE SUPREME COURT OF THE STATE
OF NEW YORK : COUNTY OF ERIE

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12/24/74
HS
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PEOPLE OF THE STATE OF NEW YORK

O R D E R

-vs-

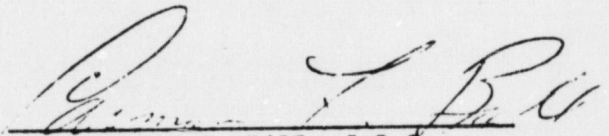
Indictment #38/72

BERNARD STROBLE a/k/a BERNARD SHANGO,

Defendant

Upon the oral application of Ernest Goodman dated March 1, 1974, the subsequent written application, the order of this Court dated April 9, 1974, affirmed 45 A.D.2d 16 (4th Dept. 1974), and the application of Ernest Goodman dated December 18, 1974, and all other proceedings heretofore had herein,

it is hereby ORDERED, ADJUDGED, and DECREED that the order and decision of this Court of April 9, 1974, that Ernest Goodman not be permitted travel and other expenses pursuant to County Law §722-c is hereby reaffirmed and the motion of said Ernest Goodman dated December 18, 1974, is hereby DENIED.


CARMAN F. BALL, J.S.C.

DATED: Buffalo, New York

ADDITIONAL SPECIAL AND TRIAL TERM
OF THE SUPREME COURT OF THE STATE
OF NEW YORK, COUNTY OF ERIE

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PEOPLE OF THE STATE OF NEW YORK

VS.

Indictment # 38/72

BERNARD STROBLE, a/k/a BERNARD SHANGO

Defendant

ERNEST GOODMAN
(Edward I. Koren of counsel)
for Defendant

MEMORANDUM

BALL, J.

Ernest Goodman, retained counsel for the defendant, made an oral application to be assigned counsel pursuant to Article 18 B of the County Law on March 1, 1974 which was denied by this court from the bench.

The present application by Ernest Goodman states that he is retained counsel; that the defendant is indigent; that he is admitted to practice law in the State of Michigan; that he is not licensed to practice in the State of New York; that the defendant is without funds to pay the expenses in connection with the preparation and trial of this case and requests that he be assigned to represent him pursuant to Article 18 B of the County Law providing for his attorneys fees and expenses and providing for an investigator and payment of investigative expenses.

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Pursuant to Article 18 B of the County Law, Erie County authorized a plan for providing counsel to persons charged with a crime who are financially unable to obtain counsel and also for investigative, expert and other services necessary for an adequate defense.

Because petitioner is not licensed to practice in the State of New York his request to be appointed as assigned counsel pursuant to Article 18 B of the County Law is denied.

"§ 722-c. Services other than counsel

"Upon a finding in an ex parte proceeding that investigative, expert or other services are necessary and that the defendant is financially unable to obtain them, the court shall authorize counsel, whether or not assigned in accordance with a plan, to obtain the services on behalf of the defendant. The court upon a finding that timely procurement of necessary services could not await prior authorization may authorize the services nunc pro tunc. The court shall determine reasonable compensation for the services and direct payment to the person who rendered them or to the person entitled to reimbursement. Only in extraordinary circumstances may the court provide for compensation in excess of three hundred dollars.

"Each claim for compensation shall be supported by a sworn statement specifying the time expended, services rendered, expenses incurred and reimbursement or compensation applied for or received in the same case from any other source." (Emphasis added.)

Petitioner's request for an investigator and authorization for the payment of investigative expenses is granted in accordance with the provisions of Section 722-c of the County Law. (People v. Cotten, 342 N.Y.S. 2d 886.)

DATED: April 9, 1974
Buffalo, New York

/s/

CARMAN F. BALL

CARMAN F. BALL
Justice of Supreme Court